

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES CURTIS KERN,

Petitioner,

v.

SACRAMENTO COUNTY DISTRICT
ATTORNEY OFFICE,

Respondent.

Case No. 2:24-cv-1630-TLN-JDP (P)

ORDER; FINDINGS AND
RECOMMENDATIONS

Petitioner, an inmate at Pelican Bay State Prison, brings this action under section 2254. ECF No. 1. He raises claims related to a 2024 conviction, but acknowledges that state appellate proceedings remain pending. *Id.* at 2. Thus, his claims are unexhausted and I recommend that the petition be dismissed on that basis. If his claims have, in fact, been presented to the California Supreme Court, petitioner may state as much in his objections to these recommendations. I also necessarily recommend denial of petitioner's motion for injunctive relief. ECF No. 8. Finally, I will grant his application to proceed *in forma pauperis*. ECF No. 9.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that the

1 petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019);
2 *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

3 Here, petitioner acknowledges that the claims he presents remain pending with the state
4 appellate court. ECF No. 1 at 2. The petition also explicitly indicates that the claims have not
5 been presented to the California Supreme Court. *Id.* at 3. Federal habeas claims must be
6 exhausted by presentation to the highest state court. *See* 28 U.S.C. § 2254(b),(c); *McNeeley v.*
7 *Arave*, 842 F.2d 230, 231 (9th Cir. 1988). Thus, petitioner's claims should be dismissed. He may
8 bring a new action when his claims have been properly exhausted in state court.

9 As the claims in the petition are unexhausted and, thus, not ripe for consideration,
10 petitioner's request for injunctive relief, ECF No. 8, necessarily fails.

11 Accordingly, it is hereby ORDERED that petitioner's application to proceed *in forma*
12 *pauperis*, ECF No. 9, is GRANTED.

13 Further, it is RECOMMENDED that:

- 14 1. The petition, ECF No. 1, be DISMISSED as unexhausted;
15 2. The motion for injunctive relief, ECF No. 8, be DENIED; and
16 3. The Clerk of Court be directed to close this action.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
22 objections shall be served and filed within fourteen days after service of the objections. The
23 parties are advised that failure to file objections within the specified time may waive the right to
24 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
25 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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2 IT IS SO ORDERED.
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4 Dated: November 13, 2024
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4 JEREMY D. PETERSON
5 UNITED STATES MAGISTRATE JUDGE